

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:20-cv-00013-MR-WCM**

<b>SOUTHERN POWER COMPANY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>CLEVELAND COUNTY,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**THIS MATTER** is before the Court on the Defendant's Motion to Dismiss [Doc. 29]; the Magistrate Judge's Memorandum and Recommendation [Doc. 39] regarding the disposition of said motion; and the Plaintiff's Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 41].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendant's Motion to Dismiss and to submit a recommendation for its disposition. On January 29, 2021, the Magistrate Judge issued a Memorandum and Recommendation, recommending that the Defendant's Motion to Dismiss be granted and that

the Plaintiff's Amended Complaint be dismissed without prejudice. [Doc. 39]. On February 19, 2021, the Plaintiff filed its Objections to the Magistrate Judge's Memorandum and Recommendation [Doc. 41]. The Defendant filed its Response to those Objections on March 15, 2021. [Doc. 43].

After a careful review of the Memorandum and Recommendation, the Court concludes that the Magistrate Judge's proposed conclusions of law are correct and are consistent with current case law. Accordingly, the Court overrules the Plaintiff's objections and accepts the Magistrate Judge's recommendation that the Defendant's Motion to Dismiss should be granted and that the Plaintiff's Amended Complaint should be dismissed without prejudice due to a lack of subject matter jurisdiction.

In its Objections, the Plaintiff requests that, in the event that the Memorandum and Recommendation is adopted, "the Court issue an order specifying the deadline by which the Plaintiff must file a Second Amended Complaint." [Doc. 41 at 29]. However, as addressed by the Magistrate Judge in the Memorandum and Recommendation, sovereign immunity deprives the court of subject matter jurisdiction. [Doc. 39 at 5 (citing Warnock v. Pecos County, Texas, 88 F.3d 341, 343 (5<sup>th</sup> Cir. 1996); Falwell v. City of Lynchburg, Virginia, 198 F. Supp.2d 765, 783 (WD Va. 2002))]. The Plaintiff asserted that sovereign immunity had been waived by the Defendant's entry

into a valid contract [Doc. 25 at 74], but the Court has determined as a matter of law that there is no valid contract between the parties. Therefore, the Defendant did not waive sovereign immunity. As a result, this Court has no subject matter jurisdiction in this matter. “[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.” Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006). “Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” Stop Reckless Econ. Instability Caused by Democrats v. Fed. Election Comm’n, 814 F.3d 221, 228 (4th Cir. 2016) (quoting Ex parte McCardle, 74 U.S. 506, 514 (1868)). Accordingly, the Plaintiff’s request is denied.


Accordingly, **IT IS, THEREFORE, ORDERED** that the Plaintiff’s Objections to the Magistrate Judge’s Memorandum and Recommendation [Doc. 41] are **OVERRULED**, and the recommendation of the Magistrate Judge [Doc. 39] is **ACCEPTED**.

**IT IS FURTHER ORDERED** that the Defendant’s Motion to Dismiss [Doc. 29] is **GRANTED**, and this Plaintiff’s Amended Complaint is hereby **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

The Clerk of Court is respectfully directed to terminate this civil action.

**IT IS SO ORDERED.**

Signed: March 23, 2021

  
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Martin Reidinger  
Chief United States District Judge

